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**OFFICE OF PETITIONS**

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In re Patent No. 7,815,932 : DECISION ON REQUEST  
Ihara et al. : FOR  
Application Number: 10/524,024 : RECONSIDERATION OF  
Issue Date: 10/19/2010 : PATENT TERM ADJUSTMENT  
Filing or 371(c) Date: 02/09/2005 :  
Atty Docket No. :  
2005\_0097A :

This is a decision on the petition filed on November 3, 2010, under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be revised to indicate that the term of the above-identified patent is extended or adjusted by eight hundred twenty-two (822) days.

The petition to correct the patent term adjustment is **DISMISSED** with respect to making any change in the patent term adjustment determination under 35 U.S.C. § 154(b) of seven hundred sixty-nine (769) days.

As to the “B” delay period, the over three year period begins on February 10, 2008, the day after the date three years after the date the application commenced the national stage pursuant to 35 U.S.C. 371(f), and ends on June 5, 2009, and is 481 days. Any time consumed by appellate review, however, is not included in the calculation of 37 CFR 1.702(b). See 35 U.S.C. 154(b)(1)(B)(ii). On April 13, 2009, a notice of appeal was filed. On June 5, 2009, the RCE was filed. Accordingly, the excluded period is the period from the date the notice of appeal was filed until June 4, 2009, the date before the date the RCE was filed, or 53 days. Considering the period excluded for appeals, the “B” delay period is 428 (481 – 53) days.

Patentees disclose that a period of reduction for applicant delay of 4 days should be entered for the filing of a supplemental response on April 23, 2009, four days after the day after the date a response was filed on April 17, 2009. On April 17, 2009, however, a Notice of Appeal was filed, as well as a response. The filing of a notice of appeal stops the clock for applicant delay. Accordingly, the filing of a supplemental response or other paper after the filing of a notice of

appeal is not considered a failure to engage within the meaning of § 1.702(c)(8). Therefore, no reduction is warranted in connection with papers filed on April 23, 2009.

Accordingly, no change will be made to the patent term adjustment of 769 (658 days Office delay + 428 days three years delay – 317 days of applicant delay) days as set forth on the face of the patent issued patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The Office thanks patentees for their good faith and candor in bringing this to the attention of the Office.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3231.



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